

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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**CHARLES NOVINS, ESQ., P.C. and
CHARLES NOVINS, personally**

Civil Action: 3:09-CV-5354

Plaintiffs

v.

**KEVIN A. CANNON, KEVIN
MICHAEL FRIES, JIM KELSO,
RHONDA LEA KIRK FRIES,
VINCENT LAMB, CARL R.
OSTERWALD, ET AL.**

**PLAINTIFFS' REPORT
TO COURT AS PER
ORDER OF AUGUST 23, 2010**

Defendants

TO: **Hon. Douglas E. Arpert**
Clarkson S. Fischer Federal Building
402 East State Street
Trenton, New Jersey 08608

Dear Judge Arpert:

As per your instruction, please accept the letter below detailing Plaintiffs' intentions with respect to going forward in the above captioned matter.

In the first instance, I have prepared an form of agreement to settle the remaining affirmative claim outstanding (against Defendant Cannon) and have forwarded this to his attorney. Based on Mr. Manzo's comments to me, it is my view this matter is settled.

That leaves the Osterwald and Lamb counterclaims against Plaintiffs.

The Osterwald counterclaim, I believe, is no longer viable in the wake of Judge Thompson's ruling (which dismissed most of Plaintiffs' claims.) The Osterwald counterclaim relies primarily upon quoted material allegedly posted by the Plaintiffs and therefore I intend to file a Rule 12(c) motion dismissing them on the merits. For purposes of fees and/or sanctions later, I will formally request that the Osterwalds voluntarily withdraw their claims. I did advise their counsel early in the litigation that the claims were specious and frivolous pursuant to the provisions of the New Jersey Rules of Court (which governed the matter at the time.)

As to the Lamb counterclaim, several parts of this claim are also vulnerable to a Rule 12(c) motion, albeit for different reasons, so I intend to file a motion to dismiss as to that as well.

I am in receipt this day of both counterclaimants' notices for oral depositions on October 13, 2010, at 9:30am in the Clarkson S. Fischer Federal Courthouse. This date, time, and location is fine for Plaintiffs, and I will be shortly notifying both counterclaimants of my intention to depose their clients at the same time and place. However, I will need to request an order of protection regarding their frivolous Notice to Produce, which, *inter alia*, demands I supply my grades from law school over 25 years ago. Depositions would involve only the parties from Plaintiffs' perspective; According to all required disclosures, neither Lamb nor Osterwald have any witnesses whatsoever.

A Notice to Produce will accompany my deposition notice as well, but it will call only for documents which are either relevant or likely to lead to other relevant discovery, as the *F.R.C.P.* and associated decisional law so provides.

Finally, it is becoming clear from attorney Duncan's unreasonable and unjustified demands regarding the interrogatories that a protective order will need to be sought regarding any further demands. After complying fully with Your August 16, 2010 order regarding further answers to interrogatories, I received a letter from Mr. Duncan replete with unreasonable demands for further inquiry as to the written questions, all of which have been fully answered as per Your Order.

Mr. Duncan now threatens, by way of motion, to involve Your Honor directly in the matter on a question-by-question basis, and I will counterclaim for fees if he should move to do so, since his stated objections to my answers are now frivolous and harrassing.

Once discovery has been completed, as I have stated previously, I expect to be moving for Summary Judgment with respect to any surviving claims, but I understood Your Honor to be requiring that this report deal only with the immediate next steps in the matter.

Respectfully submitted,

s/Charles Novins, Esq.
Charles Novins, Esq., for the Plaintiffs

Certificate Of Service

I certify that on this 1st day of September, 2010, I will electronically file this Plaintiffs' Report using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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/S/ Charles Novins, Esq.

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